

Appl. No. 10/810,382
Amdt. dated 03/13/2007
Response to Office Action of 12/20/2006

Attorney Docket No.: N1085-00264
[TSMC2003-1106]

1 **Amendments to the Drawings:**

2 The attached drawing sheets include changes to Figures 1 and 5. In each of
3 Figures 1 and 5, clamp 78 is added.

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9 Attachment: Two (2) replacement drawing sheets

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REMARKS/ARGUMENTS

Claims 1-23 were previously pending in this application and each of claims 1-23 was rejected. Claims 2, 4 and 19 are cancelled herein and claims 1, 3, 5-7, 14, 16, 17 and 22 are amended herein. Applicants respectfully request re-examination, reconsideration and allowance of each of pending claims 1, 3, 5-18 and 20-23.

I. Drawings

The drawings were objected to under 37 CFR 1.83(a) for failing to illustrate the clamp that releasably secures the bottom closed end of the flexible bag. Clamp 78 is now illustrated in each of Figs. 1 and 5. No new matter has been added as the feature appeared previously in originally-filed claim 5 and in originally-filed paragraph [0025].

II. Claim Rejections – 35 U.S.C. § 112

In paragraphs 3 and 4 of the subject Office Action, claim 14 was rejected under 35 U.S.C. § 112, second paragraph, for reciting a limitation with insufficient antecedent basis. Claim 14 has been amended to depend from claim 9, thereby correcting the insufficient antecedent basis issue. The rejection of claim 14 under 35 U.S.C. § 112, second paragraph, should be withdrawn.

III. Claim Rejections – 35 U.S.C. § 102

In paragraph 6 of the Office Action, claims 1, 2, 4, 6, 7 and 17-19 were rejected under 35 U.S.C. § 102(b) as being anticipated by Bernstein, et al. (USPN 5,385,259) ("Bernstein"), and in paragraph 14 of the subject Office Action, claims 1-3 were rejected under 35 U.S.C. § 102(b) as being anticipated by Sumanis (USPN 5,125,526). These claim rejections are believed overcome for reasons set forth below.

Claims 1 and 17 represent the independent claims among the claims rejected under § 102. Each of claims 1 and 17 has been amended. Each of independent claims 1 and 17 recites the feature of a "handle disposed outside of said exterior wall" and each recites that the handle causes a rotating member of the rotator assembly to rotate.

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Claim 1 is distinguished from Sumanis because Sumanis does not disclose a handle. The Office Action does not allege that Sumanis discloses a handle.

Claims 1 and 17 are distinguished from Bernstein for the following reasons. In rejecting claims 6 and 19, the Office Action, referring to Bernstein, states that "the outer collar of the lid (76) and the cover latches (36) act as handles for moving the rotating member," (paragraphs 9 and 13 of subject Office action). Applicants point out that cover latches 36 of Bernstein merely serve to latch the cover and define handles for carrying. "Flat areas 34 are provided on opposite sides shown in FIGS. 1 and 2 to accommodate the cover latches 36 and define handles on opposite sides of the pail so that it may be easily carried about," Bernstein col. 3, ll. 32-35. Further, "The twisted closed bag 26 may be removed from the pail by releasing the latches 36 that are attached to the lower edge of the cover skirt 76," col. 6, l. 66 – col. 7, l. 1. Latches 36 are not handles used to rotate the rotating member. Column 6, lines 62-66 of Bernstein provides: "When the person wants to dispose of the trash bag liner with one or more soiled diapers in it, he or she simply turns the cover 22 and ring 24 on the rim of the pail 20, and this action twists the bag 26 closed as shown in FIG. 7." Cover 22 and ring 24 are not exterior to the pail of Bernstein.

Independent claims 1 and 17 are therefore distinguished from Bernstein. Moreover, claim 17 recites that "a handle that twists to cause said rotator assembly to rotate" (the handle disposed outside the exterior wall) further distinguishing the claimed invention from Bernstein. Cover 22 and ring 24 of pail 20 ~~rotate~~, and certainly do not satisfy the limitation of a handle ~~twisting~~ to rotate the rotating member.

For the aforementioned reasons, the rejection of claims 1, 6, 7 and 17-18 under 35 U.S.C. § 102(b) as being anticipated by Bernstein, should be withdrawn and the rejection of claims 1 and 3 as being anticipated by Sumanis, should also be withdrawn. Claims 2, 4 and 19 have been cancelled.

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IV. Claim Rejections – 35 U.S.C. § 103

The Office Action makes the following claim rejections under 35 U.S.C. § 103(a):
claim 5 as being unpatentable over Bernstein in view of Phillips (USPN 3,321,103);
claims 8 and 21 as being unpatentable over Bernstein in view of Melnikov (USPN
5 4,030,629); claims 9-13 as being unpatentable over Sumanis in view of Scanlan (USPN
5,121,590); claims 9, 10, 14, 15, 20 and 22 as being unpatentable over Bernstein in
view of Terui, et al. (JP 01252401A, October 9, 1989) (Terui); and claim 16 as being
unpatentable over Bernstein in view of Terui and Yang, et al. (USPN 7,077,283).
Applicants respectfully submit that each of these claim rejections is obviated as set forth
10 below.

Claim 5 has been amended and is now an independent claim. Claim 5 recites
the feature of a clamp that releasably secures said bottom closed end of said flexible
bag to the interior receptacle. Claim 5 is distinguished from Bernstein and Phillips
because Phillips does not provide a clamp that secures the bottom closed END of the
15 flexible bag to the interior. Phillips, rather, uses horizontal clip 41 to grasp the side, not
the bottom end of bag 38. The rejection of claim 5 should therefore be withdrawn.

Independent claim 16 which was rejected as being unpatentable over Bernstein
in view of Terui and Yang, has also been amended to recite the feature of the "clamp
that secures said bottom closed end of said flexible bag to said interior receptacle" and
20 is distinguished from Bernstein and Phillips as discussed above. Neither Terui nor
Yang were relied upon for providing such a clamp and neither provides such a clamp.
The rejection of claim 16 should therefore be withdrawn.

Independent claim 22 which was rejected as being unpatentable over Bernstein
in view of Terui has been amended to recite that the interior receptacle and exterior wall
25 are separated by a gap. Neither Bernstein nor Terui provide the feature of the interior
receptacle being separated from the exterior wall by a gap. The rejection of claim 22
should therefore be withdrawn.

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The rejection of each of the independent claims rejected under 35 U.S.C. § 103(a), should therefore be withdrawn and the same is true for the dependent claims (claims 8-15 and 20, 21) which add further distinguishing features of Applicants' invention. The heretofore not-discussed reference of Melnikov, used to reject claims 8 and 21, does not make up for the above-stated deficiencies of the combination of references. Melnikov does not provide for closing a bag disposed in an interior receptacle and having its upper edges received in a closure mechanism. In Melnikov, no bag is present and sleeve 24 has each of its opposed sides connected to the rotating member, one of which twist to cover the underlying container, not a bag as no bag is present.

CONCLUSION

Based on the foregoing, each of pending claims 1, 3, 5-18 and 20-22 is in allowable form and the application in condition for allowance, which action is respectfully and expeditiously requested.

The Assistant Commissioner for Patents is hereby authorized to charge any fees necessary to give effect to this filing and to credit any excess payment that may be associated with this communication, to Deposit Account 04-1679.

Respectfully submitted,

Dated: March 13, 2007


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Attachment: Two (2) Replacement Drawing Sheets

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